



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2011

Mr. Robert Schell
Assistant Director General Counsel
North Texas Tollway Authority
5900 West Plano Parkway, Suite 100
Plano, Texas 75093

OR2011-13518

Dear Mr. Schell:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 430286.

The North Texas Tollway Authority (the "authority") received five requests for the video recordings related to a specified traffic crash. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See Open Records Decision Nos. 493 (1988), 287 (1981)*. Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. *Open Records Decision No. 199 (1978)*. In this instance, you have not adequately demonstrated to this office that the authority is a "law enforcement agency" for purposes of section 552.108. *See Attorney General Opinion MW-575 (1982)* (regulatory agency not "law

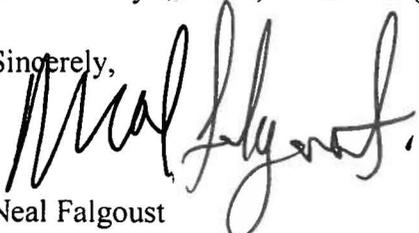
enforcement agency,” even though it is charged with duty of enforcing its own statute); ORD 199.

However, section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4–5 (1987). Thus, where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it demonstrates the information relates to a pending criminal investigation and provides this office with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. Thus, this office requires a representation from the law enforcement entity explaining how release of the submitted information will interfere with its pending case. You state the authority contracts with the Texas Department of Public Safety (“DPS”) to provide traffic and law enforcement services on the authority’s roadways. You explain the submitted video recordings relate to a fatal traffic crash on an authority roadway, and DPS responded to the crash. You further explain DPS is investigating possible criminal charges as they pertain to the crash, and the submitted video recordings are part of the DPS investigation. You state DPS has informed the authority that release of the submitted video recordings would interfere with its ongoing investigation. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Based on these representations and our review, we agree the authority may withhold the submitted video recordings under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Neal Falgoust
Assistant Attorney General
Open Records Division

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Enc. Submitted documents

c: Requestors
(w/o enclosures)